

COHEN & GREEN

June 29, 2021

The Honorable Gabriel W. Gorenstein
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, New York 10007

By Electronic Filing.

**Re: In re: New York City Policing During Summer 2020 Demonstrations,
1:20-CV-8924 (CM) (GWG)
This Letter Relates to All Cases**

Dear Judge Gorenstein:

I write on behalf of the Plaintiffs in these Consolidated Actions regarding Defendants' failure to produce their clients and others for depositions. Plaintiffs sent a collection of deposition notices on June 9, 2021 (attached as **Exhibit A**), prioritizing certain depositions based on the state of Defendants' document production and other practical, as well as strategic, considerations. Per the Court's rules, we have met and conferred on Defendants' failures to produce their clients and other NYPD witnesses for depositions several times, and after Defendants failed meet an obligation they set for themselves (to provide a proposed deposition schedule in roughly the order Plaintiffs had noticed them by Friday, June 25, so that Defendants' depositions could start Thursday July 1.

Yesterday (Monday, June 28) at around noon, we asked for a final meet and confer. Defendants then provided only a single name, of a deponent Defendants are well aware Plaintiffs require further documents to depose — and promised further updates Monday evening (which never came), while stating they were unavailable to meet and confer. Defendants have not responded to our further communications (including a request to meet and confer this morning).

As the Court knows at this point, Defendants have this case woefully understaffed. While Plaintiffs noticed depositions for June, Defendants' position was that because they only have a single attorney assigned to handle all depositions (Amy Robinson), they could not both defend and take depositions at the same time.¹ The parties met and conferred on that issue in early June, and Plaintiffs agreed not to press to take the Defendants' depositions we had noticed to begin in June so

¹ At the June 21 meet and confer, Dara Weiss confirmed that the sole reason for the scheduling issue here was that Corporation Counsel does not have any other attorney assigned to take and defend depositions. As a note, Defendants have had other attorneys cover a handful of depositions because of scheduling issues caused when Defendants have needed to reschedule or failed to produce video footage in advance of the deposition as the parties agreed.



long as we could agree on a schedule for those depositions in advance of, and commence those depositions on, July 1. But in their response on Monday, June 28, Defendants asserted they were somehow unable to handle the task of figuring out deponents' schedules because "our whole team, including the additional people we have had to add, and our client's team, has now been consumed with document collection/review." In short, Defendants continue to fall back on their choice to understaff this case — despite the Court's strong suggestions that they should staff up instead.

The parties met and conferred on Tuesday, June 22, 2021.² During that meet and confer, Defendants' counsel was clear that she had not then directly spoken to individual witnesses about availability. And apparently the primary person who handles scheduling in these matters had been out of the office for some time. We made it clear to Defendants' counsel that we noticed certain deponents to be deposed sooner than others — starting with lower-level officers involved in individual incidents whose depositions we could begin to take with certain targeted documents. Defendants ultimately committed in no uncertain terms to providing a (counter-)proposal for the deposition schedule by Friday, June 25, 2021. They also committed to scheduling depositions in "roughly" the order Plaintiffs noticed them — meaning the depositions Plaintiffs noticed for mid-June would be the first on the calendar. Armed with that information on Friday, Plaintiffs' counsel were prepared to work over the weekend to determine if Defendants' counter-proposed schedule was workable and to prepare for the depositions. But no schedule came. Plaintiffs asked for a meet and confer about this failure yesterday morning, on June 28, and, rather than providing the counter-proposed schedule, Defendants offered up only a single name — Legal Bureau Assistant Counsel Carrie Talansky — whose deposition Plaintiffs had scheduled for July 20 on a schedule that was supposed to begin in mid-June. In other words, Defendants offered up a witness with respect to whom they have not made disclosures, whom Plaintiffs had proposed deposing only after several more rounds of document production by Defendants, and following almost six weeks of other Defendants', NYPD members', and other City officials' depositions. After Defendants' counsel failed to keep her promise to provide further updates about scheduling the noticed depositions yesterday evening, we wrote asking that they provide an alternative date for the Talansky deposition later in July, explaining why, and renewed our request to meet and confer regarding these issues. Defendants' counsel have not responded.

At this point, Defendants' continued recalcitrance is causing serious prejudice: Although we had expected to begin certain depositions in mid-June, as noticed, we do not even have the basic information necessary to begin scheduling for and preparing to take *any* Defendant's or NYPD witness's deposition. Plaintiffs had planned to at least have last weekend to prepare for individual depositions, but Defendants have consumed that time without any explanation, and Plaintiffs continue to have to follow up endlessly to get the kind of basic information that is always necessary for parties to try to work issues like these out without seeking intervention from the Court. Even faced with Plaintiffs coming to the Court on this issue, Defendants made a profoundly unserious proposal — and missed yet more targets they set for themselves. So some remedy is required.

² In attendance at that meeting were Andrew Stoll, Rob Rickner, Swati Prakash, Greg Morril, Jennvine Wong, JP Perry, Doug Lieb, Lillian Marquez, Stephanie Panousieris, and me (Remy Green) for Plaintiffs, and Dara Weiss for Defendants, and the meeting lasted for approximately 45 minutes.



Plaintiffs ask that the Court approach this in three ways:

First, we ask that the Court so-order the schedule below for the noticed depositions that have not taken place, along with those already calendared for the same weeks.³

Second, there are a number of depositions Plaintiffs have noticed without names — for example, some officers are unknown to Plaintiffs except by the helmet number they are wearing in video footage; other notices have been given based on role (and Defendants have agreed these notices are sufficient during meet and confers). On these, Plaintiffs ask the Court to direct Defendants to provide the full names, Tax Registration Numbers, and ranks of any such deponents within 24 hours of the order requested above (for all currently noticed depositions), and to provide the same information within one week of future depositions being noticed.

Third and finally, Plaintiffs ask the Court to direct Defendants to confirm, within five days, what scheduling conflicts they have for the remainder of the schedule.

We thank the Court for its continued time and attention on this matter.

Respectfully submitted,

/s/

J. Remy Green

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COHEN&GREEN P.L.L.C.

Attorneys for Sow Plaintiffs, on behalf of all Plaintiffs

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Enclosure

cc:

All relevant parties by electronic filing.

³ There are a small handful of depositions from the June deposition set that have not fit on the proposed schedule, and Plaintiffs will propose alternate dates for those separately.



Early July Deposition Schedule

<i>Deponent</i>	<i>Date</i>	<i>Time</i>	<i>Deposing Party</i>
Police Officer Alfredo Jeff	July 7, 2021	9:30 am	<i>Sierra</i>
First Name Unknown Mansharamani, ID No. 941065	July 7, 2021	1:30 pm	<i>Sow</i>
Sgt. Michael Cozier	July 8, 2021	9:30 am	<i>People</i>
Police Officer Kevin Agro. Shield No. 8054	July 8, 2021	9:30 am	<i>Sow</i>
Police Officer Debora Matias	July 8, 2021	1:30 pm	<i>Sierra</i>
Police Officer Katarina Pjetri Shield No. 19806.	July 9, 2021	9:30 am	<i>Sow</i>
Police Officer Andre Jeanpierre	July 9, 2021	9:30 am	<i>Sierra</i>
Sgt. Majer Saleh	July 9, 2021	1:30 pm	<i>People</i>
Incident Commander – January 18, 2021 (Protest No. 83, Barclays Center Brooklyn to City Hall Park Manhattan)	July 12, 2021	9:30 am	<i>People</i>
Sgt. Patrick Quigley	July 12, 2021	1:30 pm	<i>People</i>
Police Officer Ismael Hernandez Carpio	July 12, 2021	9:30 am	<i>Wood</i>
Incident Commander – November 4, 2020 (Protest No. 77, Washington Square Park)	July 13, 2021	9:30 am	<i>People</i>
The NYPD Member of the Service wearing Helmet # 173 in Mott Haven on June 4, 2020	July 13, 2021	1:30 pm	<i>Wood</i>
Det. Damian Rivera	July 13, 2021	9:30 am	<i>Payne</i>
Matthew Tarangelo	July 13, 2021	1:30 pm	<i>Payne</i>
Incident Commander – Nov. 4, 2020 (Protest No. 7, Central Park to Union Square)	July 14, 2021	9:30 am	<i>People</i>
Lt. Michael Butler	July 14, 2021	9:30 am	<i>Payne, People</i>
Police Officer Thomas Mosher	July 14, 2021	1:30 pm	<i>Wood</i>
Former Chief of Training Theresa Shortell	July 15, 2021	9:30 am	<i>All cases</i>
Dep. Inspector Craig Edelman	July 15, 2021	1:30 p.m.	<i>People</i>
Patrol Borough Commander (Manhattan South) Assistant Chief Stephen J. Hughes	July 16, 2021	9:30 a.m.	<i>All cases</i>
Captain Vitaly Zelikov	July 16, 2021	9:30 am	<i>People</i>
Police Officer Umid Karimov	July 16, 2021	1:30 pm	<i>Sierra</i>